IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.3342 OF 2001

Ramesh Raghunath Chavan
Umedpur Settlement
Free Colony No.3
Solapur. ..Petitioner

Vs.

1.Bank of India
Through its Chairman
and Managing Director
Having Head Office at
Express Towers, NarimanPoint
Mumbai.

2.Regional Manager
Solapur Region and
Disciplinary Authority
Bank of India, Regional Office
Sahyadri Shopping Centre
Railway Lines P.B.No.79
Solapur.

3.Zonal Manager (Offg.)
Pune Zone and Appellate
Authority, Bank of India
Pune Zonal Office, 1162/6
Shivajinagar, University Road
Near Observatory, Pune. ..Respondents

Mr.Madhav Jamdar, Adv. for Petitioner

Mr.R.S.Pai Adv. with Ms. Sonali Kunekar Adv.i/b.
M/s.Haresh Mehta & Co. for Respondent nos.1 to 3

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 14TH FEBRUARY, 2005.

ORAL JUDGMENT (PER F.I.REBELLO,J.)

. Petitioner was in the employment of Respondent no.1. Petitioner was charge-sheeted by charge-sheet dated 13th February, 1997. The charge against the petitioner was that he had misused the

credit card issued to him by application dated 17th July, 1995. By misusing the card, he had withdrawn various amounts from time to time without keeping in mind the expenditure limit and further without sufficient balance went on making purchases. Sufficient arrangements had not been made to arrange adequate amount in the said account within 15 days as per the rules of Savings Account No.645 and as such the excess amounts were debited to the petitioner's account. It was also set out that the petitioner had made purchases in excess of limits. When it was noticed that the purchases done were in excess than the limit, the Manager had instructed him to return the said card but the petitioner continuously used the said card. As such the petitioner's credit card was noted on hot list by bulletin No.36 dated 30th May, 1996 and by sending notice dated 25th May, 1996. He was thus not granted permission for utilising credit card facility. Inspite of that the petitioner withdrew after that altogether a sum of Rs.15,000/- on dates as set out in the charge-sheet. It was the case of the Bank that the facility was completely misused and the petitioner had misused bank's amount of more than Rs.1,00,000/-.

. It was also set out, that at the time of obtaining credit card petitioner had submitted

certificate issued by Solapur Municipal Corporation mentioning therein that the petitioner's wife was in the service of Solapur Municipal Corporation and considering her income as well as the petitioner's income, the petitioner had applied for issuance of credit card. The petitioner therefore, wrongly represented and obtained credit card facility. It is then set out that in terms of Clause 19-5(J) of first Bi-partite agreement dated 19th May, 1996 the petitioner had committed misconduct which was considered as prejudicial to the interest of that Bank and amounted to gross misconduct. Petitioner was called upon to give his say.

2. Petitioner by his letter dated 1st April, 1997 replied to the charge-sheet. With reference to the contention that he had submitted certificate of Solapur Municipal Corporation of Sou. Yellamma Gaikwad, his wife, he denied having submitted under such certificate and pointed out that his wife is Yallubai Ramesh Chavan and that certificate attached was belonging to third person. It is then set out that he was working with Bank since 1984 and for a year was working without any payment. It is then set out that the Petitioner's father was ailing for a long time and that he was ready to pay credit card balances and prayed for granting instalments for paying the amount.

3. An enquiry there after was held. The Enquiry Officer submitted his findings to the Disciplinary Authority by his representation dated 20th January, 1998. In so far as the charge of getting sanctioned India Card by stating his income of his spouse as Rs.20,000/- and submitting a bogus/fake certificate issued by Solapur Municipal Corporation, the Enquiry Officer held the charge as partly true. It was held that it was proved to the extent that he had set out in the application for India Card the income of his wife was Rs.20,000/- for which he did not produce any salary certificate and thus gave a false statement. In so far as production of false certificate held not proved. In so far as the charge of misuse of card in the matter of exceeding spending limit, held that it was proved. In so far as charge of not paying amount debited in clearing account within 15 days that amount was not paid in time and therefore, proved. In respect of the charge withdrawing the amount from various branches when hot listed, held the charge of cash withdrawal to be proved, but held that the charge of the delinquent being made aware of hot listing not proved.

4. The Disciplinary Authority by a letter of 11th August, 1998 forwarded copy of enquiry report

for the say of the petitioner. The petitioner replied to the same by letter of 10th September, 1998. Then by show-cause of 17th October, 1998 the Disciplinary Authority noted the charges against the petitioner. The finding of the enquiry officer, the reply by the petitioner and the objections raised by the petitioner and rejected the contentions advanced. The Disciplinary Authority concurred with the finding the Enquiry Officer, that the petitioner had given false declaration about income of his wife and misused India Card facility by exceeding the spending limit. The Disciplinary Authority then set out that as the charges proved are serious in nature and considering the gravity of the act, proposed to impose the punishment of dismissal without notice. Petitioner was once again called to show-cause against the punishment. The petitioner was then heard on 2nd November, 1998 wherein the petitioner denied that he submitted any false certificate in respect of his wife and stated that he was ready to pay the entire amount. The proceedings disclose that the Disciplinary Authority informed the Petitioner that he will keep in mind this point. There after by order dated 30th November, 1998, the Disciplinary Authority imposed the punishment of dismissal without notice. Appeal preferred was dismissed and the order of punishment of dismissal from service was confirmed. It is this order which

is the subject matter of the present petition.

5. On behalf of the petitioner the learned Counsel submits that in sofar as issuing false certificate of his wife, the Enquiry Officer exonerated the petition of the said charge. Thus what remained in that charge was of giving false information about income of his wife. So far as misuse of the credit card/India card is pointed out that this is purely a civil act unconnected with any misconduct. The card is given not as an employees but a facility that is available to anybody who is interested in obtaining credit card from the Bank. Even if the card was used beyond permissible limits at the highest the respondents could have recovered the money in terms of the agreement whereby the card was given but it could not sound as misconduct. At any rate, he submitted that the punishment imposed is disproportionate to the misconduct alleged and proved and in these circumstances the punishment imposed is harsh and arbitrary. This Court in exercise of its extra ordinary jurisdiction and as there is violation of Article 14 of the Constitution of India ought to interfere with the Order of punishment.

. On the other hand on behalf of the respondents the learned counsel submits that charges

against the petition stand proved. The card was given to the petitioner/employee of the Bank and he had misused the card even though there were restrictions imposed. It is therefore, submitted that considering that the petitioner withdrew large amounts by using the card inspite of conditions this Court ought not to interfere with the punishment imposed.

. Both the sides have relied on the authorities which to the extent required will be adverted.

6. Clause 19.5(j) of the First Bipartite Settlement dated 19th October, 1996 reads as under:-

> . " Doing an act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss."

It will thus be seen that on the reading of the said misconduct it must be an act in the course of or arising out of employment with the Bank, which would result or likely to involve the Bank in serious loss or be prejudicial to the interest of the Bank. The allegation against the petitioner herein,s in sum and substance is that the petitioner by falsely

declaring income of his wife and himself as Rs.20,000/- got the India Card. This Credit Card was used by him beyond the limits set out by the Bank and inspite of the Bank issuing instructions that this card was notified an hot list in other words card could not have been used, the petitioner used the card for withdrawing amounts and making purchases. It is this purported misconduct which has to be examined.

. Before addressing the issue, we may refer to the judgment relied on by the petitioner. in the case of **A.L.Kalra Vs. P & E. Corpn. of India Ltd. A.I.R. 1984, Supreme Court, 1361**. In that case there were rules for granting advance, which provided the consequence of breach of conditions. An employee of Bank had availed of the advance, and had not used the amount advanced within time nor had returned the amount as set out in the rules for release of advance. The employee was charged for misconduct by the employer. The Apex Court considering this aspect held that the Rules providing for grant of advance, themselves provided the consequence of breach of condition. Therefore, there was no ground for initiating disciplinary inquiry as the breach of the Rules did not constitute misconduct.

. On the other hand on behalf of the respondent their learned Counsel relied on the judgment of the Apex Court in the case of **Mayurakshi Cotton Mills & Ors. Vs. Panchra Maurakshi Cotton Mills Employee's Union and ors., 2000 II C.L.R. 449.** The judgment at the highest is an authority for the proposition that a Writ Court in the absence of facts ought not to come to any conclusion. In that case the management declared a lockout due to financial difficulties. The same was lifted on settlement subject to certain terms and conditions. A Writ Petition was filed challenging the settlement, contending that the settlement resulted in victimisation and keeping out certain workmen by way of retrenchment. A Learned single Judge before whom it was challenged took a view, that the matter need to be adjudicated on reference by a Industrial Tribunal. In appeal the Division Bench held that the service of the workmen could not be retrenched. That was subject matter of the challenge before the Apex Court. Reliance was placed in **Regional Manager & Disciplinary Authority, State Bank of India Vs. S. Mohammed Gaffar, 2002 III C.L.R. 293.** In that case subsequent to charge-sheet and misconduct being proved punishment was imposed. The challenge to the order was dismissed by the learned Judge by holding that the charge proved was gross misconduct. In appeal the Division Bench held that in the context

in which the words gross misconduct has to be construed, the charge held proved would definitely constitute 'misconduct' and consequently directed the disciplinary authority to reconsider the punishment. It is against this order that an appeal was preferred before the Apex Court. The Court held that considering the context in which the word 'gross misconduct' has to be construed, the charge held proved would constitute gross misconduct and consequently the discretion vested with the Disciplinary Authority to impose the punishment of its choice, to suitably meet the requirements of the case, could not be either denied to it or curtailed and interfered with, in the exercise of jurisdiction under Article 226 of the Constitution of India. In that case the misconduct proved, was that the respondent while working in the establishment section and preparing the establishment register got included unauthorizedly three increments for himself pertaining to the years 1976-78, to which he was not legitimately entitled to, without any approval or sanction of the competent authority.

8. Normally a writ Court in the exercise of its extra ordinary jurisdiction would not interfere with the discretion exercised by the Disciplinary Authority while imposing punishment, provided the charge of misconduct is proved. That however, does

not mean that the Disciplinary Authority can impose punishment totally disproportionate to the misconduct alleged and proved. In such a situation, the Writ Court, in the exercise of its extra ordinary jurisdiction, if it finds the punishment to be arbitrary or disproportionate can interfere with such punishment. In that context one will have to see what is the mis-conduct proved and the punishment imposed and whether it is proportionate to the misconduct proved on the facts of the case.

. There can be no dispute the credit cards are been issued by the Bank not only to its employees but to any person willing to avail the facility of credit card on terms and conditions. This is purely a business proposition on the part of the Bank. In the normal course the only consequence of not paying the amount withdrawn under the India Card is an action for the recovery of the said amount with interest and therefore, the same cannot be termed as misconduct unless the Bank otherwise is in a position to show how it amounts to a misconduct. If there be default in payment, the Bank charges interest. In other words giving of the card or its use or misuse is not part of the conditions of service of an employee. The card can be obtained by any person including an employee who applies to the Bank and whom the Bank finds it fit to issue one.

It is in that context that the charges levelled against the petitioner herein have to be examined. There is no dispute that the Petitioner applied for a card when he was in employment of the respondent Bank. The charge against him were that he had wrongfully shown his wife's income to show combined salary as Rs.20,000/-. Thus by giving misleading information obtained the card. He had then used the card by availing facilities which ought not to have been used, considering the card was hot listed. This is the nature of the misconduct. In so far as the hot listing is concerned there is a finding by the Enquiry Officer that it was not proved. The finding was that the delinquent employee had disobeyed the order to surrender the card made by letter dated 18th April, 1996. That was not proved. If this background is seen the question arises whether the respondents could have imposed the punishment of dismissal without notice for the misconduct proved.

. The nature of misconduct proved can be summarised as follows :-

(1). That he showed his and his wife's income as Rs.20,000/- when it was not so;

(2). That he exceeded spending limit.

(3). That he had violated the terms of the India Card.

(4). That he had withdrawn various amounts and

(5). That he had disobeyed the Bank Manager's instructions to surrender the card.

. In the instant case therefore the charge of misconduct, is filing of an application for a card, by giving wrong information. Considering that the role is of Banker and customer and not Employee at the highest that would sound in misleading the Bank in issuing the card. In so far as the charge of over using the card, that is misusing the card, the misconduct alleged against the petitioner, the terms of user of card, provided for recovery of amounts and charge by way of interest/compensation, for the default in payment of the amounts. The card otherwise can be used upto the limit provided for. To constitute a misconduct, it must arise from the relationship of employment as an Employee and workman, and must have a co-relative to his duties as an employee or atleast must be incidentally concerned with his duties as an employee and his obligation to the Employer. So examined as an employee, accept for giving false information about

his wife’s salary, the rest of the charges would not amount to misconduct.

. During the period the enquiry was in progress, the petitioner has not been paid any salary as set out in the petition. In other words substantial recovery must have been made. The very fact that the petitioner was allowed to continue to serve without being suspended will be another factor to show that his continuing in service was not prejudicing the interest of the bank. In that context of the charge proved the punishment of dismissal without notice was disproportionate.

10. Considering that the following order:-

. The order of dismissal is set aside and instead considering the charges proved, the petitioner be denied an increment for a period of five years. The petitioner to be reinstated with 25% back wages and continuity of service for all purposes including terminal benefits.

. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)